85TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
No. 1728

GENERAL BOX CO.

MAY 20, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. ASHMORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 118]

The Committee on the Judiciary to whom was referred the bill (S. 118) for the relief of the General Box Co., having considered the same, report favorably thereon with amendments and recommend that the bill as amended, do pass.

The amendment is as follows:

Page 1, line 6, strike out the figures and insert "10,801".

This amendment is to conform with the recommendation of the Department of the Army and also is the amount found due by the United States District Court for the Western District of Louisiana. The additional sum represents court cost and other expenses in connection with such suit. Your committee is of the opinion that these items should be deleted. Therefore, the bill is amended accordingly.

The purpose of the proposed legislation, as amended, is to pay to the General Box Co., of Des Plaines, Ill., the sum of $10,801 in full settlement of all claims against the United States for the destruction in 1947 of certain timber which was owned by such company, in connection with the construction of a levee in the State of Louisiana pursuant to certain provisions of the Federal Flood Control Act of 1928.

STATEMENT

The General Box Co., licensed to do business in Louisiana, acquired title in fee to part of the property in question on September 21, 1946. On November 15, 1946, the company conveyed title to the land to a third party, but reserved to itself the timber rights for 20 years. On April 9, 1947, the company purchased for 10 years all timber rights on the other property in question. The timber on the land was located between the existing levee, or high-water mark, and the low-water mark along a portion of the banks of the Mississippi River.

Lands thus located between the high- and low-water marks of a river is known in Louisiana as "batture," and is subject to special treatment under the Louisiana constitution.

In May of 1947, the State district engineer wrote to the president of the local levee board that the United States district engineer had proposed a project to enlarge the Brabston and Ashland levees, south of Vidalia, La., and recommended that the board concur in this proposal. On June 10, 1947, the United States district engineer sent copies of the plans to the board and requested that the board furnish a formal letter indicating that rights-of-way were available and that the United States was granted a right of entry to prosecute the work. On June 12, 1947, the levee board, acting according to its own procedure, notified the district engineer of its decision to accede to his request. On July 31, 1947, the local tax assessor furnished the board with a list of the property owners in the area in which the work was to be performed, but the name of the General Box Co. did not appear thereon and, as a result, although the Government's contractor entered on the property in question on August 1, 1947, and began to clear the land by bulldozing down the trees, it was not until about September 12, 1947, that the box company learned of the partial destruction of its property. At that time, the box company requested the Government's contractor to discontinue operations and allow the box company to cut the remaining timber. This request was refused by the contractor because its bid for the work had been made on the basis of bulldozing the trees and additional expense would be incurred if the trees were cut and the contractor then had to remove the stumps. It should be noted at this point that, although it was necessary to remove these trees in order to obtain soil of the type necessary for the enlargement of the levee, none of the timber was necessary for or used in the enlargement of the levee.

Thereafter, the company brought suit in the United States district court, under the Tucker Act, for damages for the destruction of its property, and ultimately a judgment of $10,801, plus interest, was entered against the United States by the district court. The United States and the General Box Co. both appealed to the court of appeals, the former on the merits, and the latter on the ground that the judgment allowed only 4 percent interest from the date of judgment. The court of appeals, with one judge dissenting, reversed, holding the United States free from liability. The United States Supreme Court granted certiorari and, with two justices dissenting, affirmed the ruling of the court of appeals, and on June 11, 1956, denied a petition for a rehearing.

The Supreme Court, speaking through Mr. Justice Reed, reasoned that Louisiana had donated to the United States its right to destroy the timber without prior notice. It was conceded that under Louisiana law the State had a riparian servitude for constructing and repairing the levees, and that the owner was required to permit the State to use the property for that purpose, without compensation. The Court had some difficulty with the problem of notice, since there was no State decision directly in point, but it relied on the court of appeals' determinations of State law.

Mr. Justice Frankfurter concurred, but remarked—

> * * * what a precarious business it is for us to adjudicate a Federal issue dependent on what the Court finds to be State law, when the highest court of a State has not given us authoritative guidance regarding its law. In like situations I have, from time to time, suggested that legal procedure is not without resources for enabling us to found our decision securely on State law.

Mr. Justice Douglas, with whom Mr. Justice Harlan concurred, dissented, stating:

> Even if I am mistaken in this view of the Louisiana law, I would hold as a matter of Federal law that the United States cannot rely on the State-created servitude to justify its own action, which borders on the wanton destruction of the property interests of the private owners of the timber. For all that appears General Box was prepared to remove the timber without additional expense or delay to the United States.

The Department of the Army, in its report on the bill, states:

> The General Box Co. has not been compensated for the damage to its property, and under the terms of the Louisiana constitution cannot be so compensated. In this situation, the Department of the Army would have no objection to the payment of compensation to the General Box Co. for the loss it has incurred. The equitable obligation of the United States appears to be coexistent with that of the State of Louisiana, and since it would evidently require a constitutional amendment to authorize the payment by the latter, the only practicable existing means of payment is via the enactment of private relief legislation by the Congress.

As to the joint benefits received by the State of Louisiana and the Federal Government with respect to the levee project, there is set forth below a memorandum prepared by an attorney for the company, with which the committee concurs, in that it concludes that the levee projects are of benefit to the entire United States.

STATE BENEFITS AS OPPOSED TO FEDERAL BENEFITS OF THE MISSISSIPPI RIVER LEVEE SYSTEM

> The Flood Control Act appears as chapter 15 of title 33 of the United States Code Annotated. The declaration of the policy of flood control as it relates to States appears as section 701–1 and the declaration of policy as it relates to the

Federal Government appears as 701–A. We quote the latter statute as follows:

"It is hereby recognized that destructive floods upon the rivers of the United States, upsetting orderly processes and causing loss of life and property, including the erosion of lands, and impairing and obstructing navigation, highways, railroads, and other channels of commerce between the States, constitute a menace to national welfare; that it is the sense of Congress that flood control on navigable waters or their tributaries is a proper activity of the Fedeal Government in cooperation with States, their political subdivisions, and localities thereof; that investigations and improvements of rivers and other waterways, including watersheds thereof, for flood-control purposes are in the interest of the general welfare; that the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, and if the lives and social security of people are otherwise adversely affected."

It is thus seen that, as declaration of congressional policy, the general welfare clause and commerce clause of the Federal Constitution are paramount to the rights of the States.

Under the levee system formulated under the Jadwin plan and put into effect under the Flood Control Act subsequent to 1928, a complete revision was made and almost a complete departure from other levee plans and methods of controlling floodwaters of the Mississippi River. This revised plan, as we understand, called for levees far removed from the riverbanks, for setback levees, fuse-plug levees and other innovations, including the impounding of waters of the tributaries when the main river is in flood stage. Some of the outstanding examples in this area are the Bonne-Carre Floodway, the reservoir systems of north Central Mississippi and the Morganza project. The Bonne-Carre Floodway is designed to protect New Orleans by diverting the floodwaters from the Mississippi River to Lake Pontchartrain. The Morganza project operates to prevent the Mississippi River from uniting with the Atchafalaya River, which, if this took place, would shorten the distance to the Gulf of Mexico by approximately 100 miles but in doing so, would leave Baton Rouge and New Orleans practically high and dry for river commerce purposes. The reservoir systems around Enid, Grenada, and Sardis, Miss., impound the waters of the upper Yazoo River watershed and control the flow of that watershed into the Mississippi River when it is at flood stage.

We have considered the levee system as one which knows no political boundary lines and the system is in the nature of a chain which is no stronger than its weakest link.

If New Orleans, Baton Rouge, and other river ports are benefited, or if the States benefit, we take the position that it is an incidental benefit and only subsidiary to the greater

benefit received by the Federal Government. The commerce carried on the Mississippi River compares favorably with the commerce of the St. Lawrence Waterway and the Great Lakes system. No one would dispute that the St. Lawrence Waterway and the Great Lakes system benefit the Nation as a whole, rather than the immediate bordering States.

Early after the Louisiana Purchase in 1803, Congress declared, "All navigable rivers and waters in the former Territories of Orleans and Louisiana shall be and forever remain public highways" (33 U. S. C. A. 10).

Recently, the American Society of Civil Engineers held its national convention at Jackson, Miss., and there were a number of outstanding speakers, some of whom discussed the Mississippi River and flood control. One of them was Maj. Gen. John Hardin, division engineer of the lower Mississippi Valley division of the Corps of Engineers. The press reports him as saying, "In no other river valley of the United States is the problem of flood control more complex than in the lower Mississippi River Valley." He also stated, according to the press, "In recent years, large industries have moved into the lower 200 miles of the river and to a considerable extent above that point, indicating an awareness of the security and opportunity that exists along this great river for a growing America. All of these facts have contributed to the need for a present reexamination of the project."

Col. William H. Lewis, district engineer of New Orleans, is quoted as saying, "Completion of the Mississippi River-Gulf Outlet will provide an essential facility for the port of New Orleans and for the entire Mississippi River Valley for an orderly and continuous development, consistent with the requirements of a rapidly expanding national population and economy."

The reservoirs of the Missouri Basin were discussed and R. J. Pafford, of Omaha, Nebr., Chief of the Reservoir Control Center, Missouri River division, Corps of Engineers, said, "The six reservoirs of the Missouri Basin, the last of which is nearing completion, are the world's largest existing block of manmade reservoir capacity," and these reservoirs are said to be helping transform what was once called the "great American Desert" into a fertile land and are reducing flood threats in an important region of the United States. These reservoirs serve an area stretching 1,300 miles from Cut Bank, Mont., to St. Louis, Mo.

The Missouri River is one of the tributaries of the Mississippi River and we are informed it is 50 or more miles longer than the Mississippi River. Some treat the Missouri River as part of the Mississippi River. The two rivers combined are a total length of approximately 4,000 miles, rivaled only by the Nile and the Amazon.

The industries referred to by General Hardin are the oil refineries, chemical and electric plants, and other great industires already in operation or in the course of construction along the river from above Baton Rouge to below New Orleans. The vital part these industries would have in a

national emergency cannot be overestimated and their value is incalculable.

The Babstrom levee is an important link in the overall flood-control plan in the lower Mississippi River Valley. The timber involved was located in Dead Man's Bend of the river and the levee was built across the land in the bend of the river. The location is about 20 miles south of Natchez, where the plant of the General Box Co. was located. The timber could have been barged or trucked to Natchez.

The benefits to the States bordering the river are unquestionably great, but the greater benefits accrue to the Nation at large because of the traffic on the river and the commerce between the States and foreign countries.

Without any disrespect to the dignity of the authority vested in the local authorities in the administration of levee affairs in their own districts, the realities of the situation are that the Federal authorities at all times control. Overhanging the problem is the inherent power, aside from the statutory power, of the Federal Government to act in critical times, with or without the cooperation of local authorities, in reference to commerce and flood control and from these powers, necessarily, the Federal Government could act at any time when cooperation is lacking or is refused by the local authorities. The Nation has a great financial stake in the Mississippi River and, when considered in the light of the welfare of the Nation, will understandably usurp local authorities any time the need for it arises.

We are firmly of the belief that the Nation at large benefits more than the bordering States under the flood-control program of the entire Mississippi Valley Basin, and particularly the lower portion thereof.

The Department of Justice, in its report, opposes the enactment of the bill, on the basis of the above-referred-to Federal court decision, and this is a position to which the committee does not desire to take exception. However, any such view of the legal rights of the parties should not be taken in derogation of the equitable right of Congress to compensate the company for the loss of its property in connection with a Federal project for the benefit of all the people.

The committee has inserted language to permit a payment of attorney fees out of this award, not to exceed 10 percent, inasmuch as it is clear that certain attorneys have performed valuable services in connection with this claim.

Attached hereto for the information of the Senate are the above-referred-to letters of the Department of the Army and the Department of Justice, as well as a letter addressed to the chairman of the committee by one of the attorneys in the case.

DEPARTMENT OF THE ARMY,
Washington, D. C., June 6, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to S. 118, 85th Congress, a bill for the relief of the General Box Co.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the General Box Company, of Des Plaines, Illinois, the sum of $13,-143.10. Such sum shall be in full satisfaction of all claims of such company against the United States for the destruction by the United States in 1947 of certain timber which was owned by such company in the State of Louisiana and for the loss of which such company brought suit against the United States in civil cases numbered 2536 and 2804 in the United States District Court for the Western District of Louisiana, Alexandria Division."

The Department of the Army has no objection to this bill, provided it is amended as hereinafter recommended.

Under the Federal Flood Control Act of May 15, 1928 (45 Stat. 534), as amended (33 U. S. C. 702a et seq.), the United States cooperated with the State of Louisiana in the containment of the Mississippi River, by the use of levees. To carry out this program, the United States required and the State of Louisiana agreed to furnish, without cost to the United States, the necessary rights-of-way for the construction of levees. By statute (Act No. 75, Acts of 1940, La. Rev. Stat., sec. 52.2), the State of Louisiana authorized local levee boards to donate to the United States the necessary "lands, movable or immovable property, rights-of-way, or servitudes" for use in connection with flood control. In 1928, the board of commissioners of the Fifth Louisiana Levee District agreed to meet the requirements of the Federal Flood Control Act by passing a resolution to "provide without cost to the United States all rights-of-way for levee foundations and levees on the main stem of the Mississippi River."

On May 19, 1947, the State district engineer wrote to the president of the Fifth Levee District that the United States district engineer had proposed a project to enlarge the Brabston and Ashland levees, south of Vidalia, La. The State district engineer recommended that the levee board concur in this proposal. On June 10, 1947, the United States district engineer sent copies of the plans to the levee board and requested that if the board agreed to this proposal, it furnish a formal letter indicating that rights-of-way were available for the work and that the United States was granted a right of entry to prosecute the work.

On September 12, 1945, the levee board had adopted a resolution empowering the president of the board to "grant rights-of-way where the need is immediate, the proper right-of-way resolutions to be passed in the regular manner at the following board meeting." Pursuant to this authority, on June 12, 1947, the board president responded to the request of the United States district engineer by quoting its words and adding that, "The Board of Commissioners of the Fifth Louisiana Levee District hereby is glad to comply with

your request and render you any assistance possible." On July 9, 1947, that letter was incorporated in the minutes of the board. In later litigation arising out of this project, the United States court of appeals and the United States Supreme Court accepted this procedure as a ratification by the board of the acts of its president.

On July 15, 1947, the United States district engineer advised the board that notice to proceed with the levee enlargement had been sent to H. B. Blanks Construction Co. on June 10, 1947, and to Pioneer Contracting Co. on July 11, 1947, and that under the terms of the contracts work was to commence within 20 days of those dates.

The board had first been advised of the pendency of this project on May 19, 1947, and on June 12, 1947, the board president had notified the office of the United States engineers that the board accepted the proposal and agreed to furnish the rights-of-way. On June 20, 1947, the board requested that the local tax assessor furnish it with a list of the property owners in the area in which the work was to be performed. After a second request of the same nature, this list was furnished by the assessor on July 31, 1947. The name of the General Box Co. did not appear on this list. The United States district court in one of its opinions on this case (*General Box Company* v. *United States et al.*, 107 F. Supp. 981 (1952)) indicated that General Box Co. had acquired timber rights on the property involved, after the compilation of the tax rolls, and therefore did not appear on the list.

General Box Co., a Delaware corporation, licensed to do business in Louisiana, on September 21, 1946, acquired title in fee to part of the property in question. On November 15, 1946, the company conveyed title to the land to a third party, reserving to itself for 20 years the rights to all timber on the property. On April 9, 1947, the company purchased for 10 years all timber rights on the other property in question. The trees on the land were located between the existing levee, or high-water mark, and the low-water mark along a portion of the banks of the Mississippi River. Land located between the high- and low-water marks of a river is known in Louisiana as "batture," and is subject to special treatment under the Louisiana constitution.

On July 31, 1947, an inspector for the levee board verbally notified the owners of the land on which the timber was situated of the project. On October 10, 1947, the president of the levee board addressed the following letter to the landowners:

"Our inspector, Mr. D. L. Nelson, advises us that you have been previously notified by him that the enlargement work on the Brabston and Ashland levees in Concordia Parish, La., would soon begin.

"As you of course know, the work on the Brabston enlargement has already started. We are today in receipt of a letter from the Corps of Engineers, New Orleans district, advising us that notice to proceed with work on items M–337–R–D & E, Ashland levee in Concordia Parish, La., was issued October 7, 1947, to the Atlas Construction Co., Waxahachie, Tex.

"According to the terms of the contract, work must commence within 20 calendar days after the date of receipt by the contractor of notice to proceed.

"We respectfully request that any buildings, timber, or other obstacles which might be within the rights-of-way be removed prior to the time that the contractor begins work.

"For any further detailed information which you might desire I would advise that you contact Mr. F. N. Geddes, regional engineer, United States Engineers, St. Joseph, La."

It is to be noted that this formal letter was not sent to the landowners until the work on Brabston levee had commenced, and that no notice, verbal or written, was ever given by the levee board to the General Box Co.

On or about August 1, 1947, acting under its contract with the United States engineers for the enlargement of the Brabston levee, the Pioneer Contracting Co. entered upon the land on which the timber owned by the General Box Co. was situated, and began to clear that land by bulldozing down the trees. The contract called for this method of land clearance, because it was admittedly much cheaper to bulldoze the trees than to cut them down and then remove the stumps. The Government brief to the United States court of appeals in the later litigation states that, "It [the timber] was pushed over and thus destroyed, by bulldozers because the contractors' bid was substantially reduced 'on the basis of that method of removing the timber.' * * * This was a substantially less expensive method than removing the stumps which appellee's [General Box Co.'s] salvaging operation would leave." It was necessary to remove these trees in order to obtain soil of the type necessary for the enlargement of the levee. None of the timber was necessary for or used in the enlargement of the levee.

Because of the isolated location of the timber, the company did not learn about the destruction of its trees until on or about September 12, 1947. Representatives of the company then went on the land and noting that only a portion of the timber had been destroyed, asked the Pioneer Contracting Co. to discontinue operations and allow the General Box Co. to cut the remaining trees. This request was refused by the contractor because its bid for the work had been made on the basis of bulldozing the trees and additional expense would be incurred if the trees were cut and the contractor then had to remove the stumps.

The General Box Co. filed two actions in the district court against the United States and the Pioneer Contracting Co. for damages under the Tucker Act (28 U. S. C. 1346 (a) (2)). Alternative claims made under the Federal Tort Claims Act were later abandoned in the district court. The suits were consolidated for trial, and ultimately a single judgment of $10,801, plus interest, was entered against the United States (119 F. Supp. 749 (W. D. La., 1954)). The prior opinions of the district court in the case appear at 94 Federal Supplements 441 and 107 Federal Supplement 981. The United States and General Box Co. both appealed to the court of appeals, the former on the merits and the latter on the ground that the judgment allowed only 4 percent interest from the date of judgment. The court of appeals, with one judge dissenting, reversed the case, holding the United States free from liability (224 F. 2d 7 (5th Cir., 1955)). The United States Supreme Court granted certiorari "to examine the liability of the United States for proceeding to clear this land without notice to petitioner, the owner of the trees, and thus without granting petitioner a reasonable opportunity to salvage the timber." With two Justices dissenting, the Supreme Court affirmed the ruling of the court of appeals freeing the United States from liability (351 U. S. 159 (1956)).

On June 11, 1956, the Supreme Court denied a petition for rehearing (351 U. S. 990 (1956)).

The timber destroyed was located on land between the levee (or highwater mark) and the low-water mark of the Mississippi River. Such land is known as batture in Louisiana and is subject to special rules regarding its use by the State. Historically, in Louisiana, the owner of property bordering on a navigable stream was required to give to the State, without compensation, so much of the land as might be required for the construction of levees and highways. This servitude was modified by article XVI, section 6, of the Louisiana constitution of 1921, which provides as follows with respect to such lands:

"Lands and improvements thereon hereafter actually used or destroyed for levees or levee drainage purposes * * * shall be paid for at a price not to exceed the assessed value for the preceding year, *provided that this shall not apply to batture* * * *." [Italic added.]

The Supreme Court, in denying the liability of the United States in this case, summarized the applicable law as follows (footnotes omitted):

"Petitioner [General Box Co.] concedes that under the civil law of Louisiana the property on which its trees were standing, being batture, is subject to a riparian servitude for use by the State of Louisiana in constructing and repairing levees, and that historically the owner of such property has been required to permit State use without compensation of such part thereof as might be needed for levee purposes. And it is not denied that the timber on this land, as well as the land itself, is subject to the exercise of the servitude for levee purposes.

"Petitioner in effect does claim, however, that the State did not effectively exercise the riparian servitude for the reason that the appropriation here was arbitrary and therefore beyond the power of the State. This contention is based upon the fact that no notice of the proposed destruction was given to petitioner. It is argued that under Louisiana law, which of course defines the bounds of the riparian servitude, the power possessed by the State by reason of the servitude is not an unlimited and arbitrary power; that it would be arbitrary, oppressive, and unjust to exercise the State's rights under the servitude in the circumstances of this case without prior notice to petitioner; that therefore the attempt by the State to exercise the servitude without such notice was ineffective to cause an appropriation of the timber pursuant to the servitude. If Louisiana could not exercise its rights under the servitude without first giving notice to petitioner, the timber here involved was never successfully taken by the State free of an obligation to compensate for the taking. It would follow that the United States received no rights from the levee board permitting destruction of the trees by it free of that obligation. The court of appeals held, based upon its analysis of Louisiana law, that prior notice to petitioner was not a prerequisite to an appropriation of its timber for levee purposes. We ordinarily accept the determinations of the courts of appeals on questions of local law, and we do so here. * * *

* * * * * * *

"Since, as we hold, petitioner's property was effectively appropriated by State authorities pursuant to the servitude, the United States cannot be liable to petitioner for the value of the property.

The State, as owner of the servitude, legally could have destroyed the timber without prior notice and without any opportunity for mitigation of losses, and yet be free of liability to petitioner. The destruction, it seems to us, was consistent with the rights of the State under the servitude. Rather than undertaking the levee project itself, Louisiana, through one of its agencies, donated its rights as against petitioner's timber to the United States. The United States, as donee of those rights, could exercise them to their full extent without incurring liability, just as its donor could have done."

In view of the above determinations, the Supreme Court did not rule upon the computation of compensation, or the question of the rights of the United States against the levee board in the event that the former should be held liable.

The question of legal liability having been resolved against the General Box Co. by the highest court in the land, only the equities of the case can remain for consideration. On one side, the company has been deprived of valuable property through no fault of its own. On the other side, the United States acted pursuant to an arrangement with the State of Louisiana to supply rights-of-way without cost to the United States. Mr. Justice Douglas, with whom Mr. Justice Harlan concurred, dissented from the majority opinion of the Supreme Court. He doubted that Louisiana law allowed the seizure of batture without prior notice to the property owner, and went on to observe:

"Even if I am mistaken in this view of the Louisiana law, I would hold as a matter of Federal law that the United States cannot rely on the State-created servitude to justify its own action, which borders on the wanton destruction of the property interests of the private owners of the timber. For all that appears General Box was prepared to remove the timber without additional expense or delay to the United States.

"The requirement of notice is deeply engrained in our system of jurisprudence. *Mullane* v. *Central Hanover Bank* (339 U. S. 306); *Covey* v. *Town of Somers*, decided this day (351 U. S. 141 (1956)). The taking of property without notice where notice can reasonably be given and with the result that the owner is deprived of the chance to salvage the property is sheer confiscation."

The effect of the hold-harmless clause executed by the State of Louisiana in connection with the Federal flood-control program, should be to establish a right of action over by the United States against Louisiana, in the event that the United States is held legally liable for damages arising out of a project covered by the hold-harmless clause. Individuals cannot by a contract executed between them, insulate themselves from liability to a third person not a party to that contract. The United States as a sovereign is entitled to immunity from suit except to the extent that the immunity has been waived. However, in view of the general waivers of immunity in the Tucker Act and the Federal Tort Claims Act, it hardly seems probable that the effect of a hold-harmless clause executed pursuant to the Federal flood-control program is to limit these waivers of immunity. The Supreme Court in its decision on this case did not absolve the United States from liability because of the hold-harmless clause, but rather because it found that the taking by the State of Louisiana was lawful and, therefore, the United States as donee of the State succeeded to the same rights. The Court stated that,

"If Louisiana could not exercise its rights under the servitude without first giving notice to petitioner, the timber here involved was never successfully taken by the State free of an obligation to compensate for the taking. It would follow that the United States received no rights from the levee board permitting destruction of the trees by it free of that obligation."

The General Box Co. has not been compensated by Louisiana for the damage to its property, and under the terms of the Louisiana constitution cannot be so compensated. In this situation, the Department of the Army would have no objection to the payment of compensation to the General Box Co. for the loss it has incurred. The equitable obligation of the United States appears to be coexistent with that of the State of Louisiana, and since it would evidently require a constitutional amendment to authorize the payment by the latter, the only practicable existing means of payment is via the enactment of private relief legislation by the Congress.

It was the opinion of the Federal district court that the damage to the timber of the General Box Co. amounted to $10,801, exclusive of interest. S. 118, 85th Congress, provides for the payment of $13,143.10 to the company. It is recommended that S. 118 be amended by striking out "$13,143.10" as it appears in line 6 of page 1 of the bill, and inserting in lieu thereof "$10,801," and by adding the following provision at the end of the bill:

"*Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

The cost of this bill, if enacted as recommended, will be $10,801.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D. C., June 7, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill (S. 118), for the relief of the General Box Co.

The bill would provide for the payment to the General Box Company, of Des Plaines, Ill., of the sum of $13,143.10 as compensation for the loss sustained by the claimant company as the result of the construction of a flood-control project on the Mississippi River.

The act for the control of floods on the Mississippi River and its tributaries (45 Stat. 534), provided in part that "No money appropriated * * * shall be expended on the construction of any item of

the project until the States or levee districts have given assurances satisfactory to the Secretary of War that they will * * * (c) provide without cost to the United States, all rights of way for levee foundations and levees on the main stem of the Mississippi River between Cape Girardeau, Missouri, and the Head of Passes."

Claimant company owned certain timber growing on the land between the high- and low-water marks on the bank of the Mississippi River where a protective levee wall was constructed by a contractor of the United States. The timber was destroyed by the contractor in clearing the land. Claimant company brought suit against the United States in the United States District Court for the Western District of Louisiana for the value of the timber and was awarded judgment for damages which were assessed at $10,801 (*General Box Company* v. *United States*, 94 F. Supp. 441, 107 F. Supp. 981, 119 F. Supp. 749). The Court of Appeals for the Fifth Circuit reversed (224 F. 2d 7) and the Supreme Court of the United States affirmed the decision of the court of appeals (351 U. S. 159).

In the opinion of the Supreme Court it is noted that the State of Louisiana had by legislative act given general authority to its levee boards to donate the necessary lands to the United States and that a right of entry to do the work involved in the case had been given to the levee district. No notice was given to the claimant of the intention to remove the trees and the claimant contended that it should have been given the opportunity to salvage the timber. Both the court of appeals and the Supreme Court construed the Louisiana law as not requiring such prior notice as a prerequisite to the appropriation of the timber for levee purposes and that the United States succeeded to the rights of the State which, in effect, owned the timber for levee purposes.

In the circumstances there appears to be no justification for requiring the United States to assume liability for the loss of claimant's timber. Accordingly, the Department of Justice is opposed to the enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

BARNETT, JONES & MONTGOMERY,
ATTORNEYS AT LAW,
Jackson, Miss., January 15, 1957.

Re claim of *General Box Co.* v. *United States.*

Hon. J. O. EASTLAND,
United States Senator, Washington, D. C.

DEAR SENATOR EASTLAND: We understand that on January 7, private bill S. 118 was introduced for the relief of General Box Co. The bill is for authority to pay $13,143.10, which represents an original judgment of $10,801 entered on May 17, 1954, in the United States District Court for the Western District of Louisiana, and $2,342.10, representing the court costs and expenses of carrying the litigation through to the Supreme Court of the United States. The judgment

was reversed by the Court of Appeals for the Fifth Circuit and the United States Supreme Court affirmed the court of appeals.

The action grew out of the destruction by levee contractors of timber owned by the General Box Co., which timber was situated between the levee and the Mississippi River on the Louisiana side. The contractors were performing a contract with the United States engineers in raising the height of the levee and everything the contractors did was pursuant to the contract.

The action was based upon the due compensation clause of the fifth amendment of the Federal Constitution.

It would unduly lengthen this letter to give all the facts about the controversy but the facts will be found in the several opinions rendered in the suit. The district court's opinions are reported in 94 Federal Supplement 441, 107 Federal Supplement 981 and 119 Federal Supplement 249. The opinion of the court of appeals is reported in 244 Federal 2d 7. We call particular attention to the dissent of Judge Cameron in the latter opinion.

The Supreme Court's opinion is in 351st United States Reports at page 159, 100 Lawyer's Edition 582, 76 Supreme Court 728. Justices Douglas and Harlan dissented from this opinion.

Our firm and two other law firms represented the General Box Co. in this litigation and, naturally, are very much interested in Senate bill 118.

The Supreme Court applied Louisiana law to the facts and found that the timber had been taken under the civil law of Louisiana and the due compensation clause of the Federal Constitution had no application. The dissent of Justices Harlan and Douglas was based upon the conclusion that Judge Dawkins, the district judge, was the one most able to construe and apply the civil law of Louisiana and for that reason, his opinion should be affirmed.

It would, doubtless, appear to you at this point that, the Supreme Court having disposed of the case, there is nothing further than that to be done. But the concluding sentence of the opinion of the Supreme Court said, "Petitioner did not assert in its complaint or in its question presented on petition for certiorari that destruction violated the due process clause of the fifth amendment."

For the General Box Co. to pursue the due process avenue in approaching the problem would almost, of necessity, require an enabling act to avoid the statute of limitations, for the original destruction occurred in 1947. Then, too, the delay and expense of carrying on the original claim under the due compensation clause makes it almost impractical to undertake to go again into the district court or into the Court of Claims. Judge Dawkins fixed the value of the timber at $10,801. But even though the Supreme Court had affirmed Judge Dawkins, the cost against the United States would not have been recoverable (28 U. S. C. A. 2412). These costs, of course, did not include the expenses incurred by the three law firms in the litigation.

You will thus realize the discouragement, from a cost and expense point of view, of taking the case up again under the due process clause when the most that is recoverable would be in the neighborhood of $10,801.

When we filed the suit under the due-compensation clause, we did so under the theory that the Mississippi River is strictly a Federal problem. The original approach we took was that, being a Federal

problem and the Federal Government having moved in, the local authorities had nothing more to do with it. The river drains tremendous watershed through the northern areas of the country and carries enormous commerce. The very floods which so enriched the soil in the lower regions of the river made it, in many years, particularly in 1928, impossible to cultivate. After the disastrous flood of 1928, the Flood Control Act was just about rewritten and from it, we got the impression that very little authority was left to the local authorities. There is nothing, however, that we can tell you about the river, from your personal experience with it and from your long experience in Congress.

We are writing to ask you to give careful consideration to Senate bill 118 and to give it, if you will, the benefit of your help and assistance. It is our sincere opinion that there is a debt due and owing that ought to be paid by the United States from a legal point of view, but aside from that, there is the moral obligation of the Government to pay for what is destroyed at a time when no emergency existed.

The writer again expresses his appreciation for the courtesies shown on the recent visit to you during the holidays. I will continue to hope for success for you in all of your endeavors.

With good wishes, I am,

Sincerely yours,

P. Z. JONES.

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